

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOWARD E. MARTIN, III,

Petitioner,

:

v.

Case No. 2:22-cv-4423
Judge Sarah D. Morrison
Magistrate Judge Karen L.
Litkovitz

WARDEN, CHILLICOTHE
CORRECTIONAL
INSTITUTION,

:

Respondent.

ORDER

On June 20, 2023, the Magistrate Judge issued a Report and Recommendation recommending the Court deny Petitioner Howard E. Martin, III's "Motion for Judgment by Default." (R&R, ECF No. 23; *see* ECF No. 21.) In her R&R, the Magistrate Judge explains that motions for default judgment are unavailable in federal habeas corpus cases where a respondent failed to file an answer. (R&R PageID 148) (collecting cases); *see also Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). Mr. Martin timely filed an Objection. (ECF No. 24.)

If a party objects to a report and recommendation within the allotted time, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

In his Objection, Mr. Martin argues about another case he filed, Case No. 1:23-cv-205, which was dismissed by this Court because the petition filed in it was duplicative to the operative petition filed in this case. Mr. Martin's arguments are therefore irrelevant to the R&R. The Court has analyzed the R&R and finds the Magistrate Judge's reasoning sound. Even assuming entering a default and default judgment was appropriate in a habeas case where a respondent failed to file an answer (which it is not), Respondent has until July 10, 2023, to file an answer. (ECF Nos. 13, 19.)

Thus, Mr. Martin's Objection is **OVERRULED** and the R&R is **ADOPTED** and **AFFIRMED**. Mr. Martin's Motion for Judgment by Default is **DENIED**.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE